IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 16337 of 2007(T)

AGAINST THE ORDER IN IA 1980/2006 IN
OS.298/2002 of MUNSIFF COURT, PERUMBAVOOR

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PETITIONER:

PAUL VARGHESE, AGED 55 YEARS,
S/O.GEEVARGHESE, OLAPPURA HOUSE,
IRINGOLE KARA, PERUMBAVOOR VILLAGE.

BY ADV. SRI.G.RAJAGOPAL
SRI.THOMAS M.JACOB

RESPONDENTS:

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1. MARIYAMMA THOMAS, AGED 57 YEARS,
W/O.THOMAS JACOB, MARACHERRY PUTHETH HOUSE,
NELLIMATTOM KARA, KOTHAMANGALAM VILLAGE.

2. BIJOY M.THOMAS, AGED 37 YEARS,
S/O.MARIYAMMA, MARACHERRY PUTHETH HOUSE,
NELLIMATTOM KARA, KOTHAMANGALAM VILLAGE.

3. RAJEEV.M.THOMAS, AGED 36 YEARS,
S/O.MARIYAMMA, MARACHERRY, PUTHETH HOUSE,
NELLIMATTOM KARA, KOTHAMANGALAM VILLAGE.

4. ABY M.THOMAS, AGED 29 YEARS,
S/O.MARIYAMMA, MARACHERRY PUTHETH HOUSE,
NELLIMATTOM KARA, KOTHAMANGALAM VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.16337 OF 2007 T

Dated this the 30th May, 2007.

JUDGMENT

This writ petition is filed seeking to quash the order passed in I.A.1980/2006 in O.S.298/2002. The suit is one for declaration of title that the plaintiffs have right in the property by virtue of the document 3907 of 1969 and for consequential reliefs. A reading of the statement would reveal that the main contention of the defendant is that though the father had executed a document 3907 of 1969 no title was passed on to the plaintiffs and subsequently the property had been transferred in favour of the defendant. The amendment application is filed seeking to change the extent, survey numbers and boundaries of the property. The reason averred is that the plaintiffs were not looking after the property. It was looked after by the defendant and in the lapse of time from 1969 onwards the property shown as the boundaries had been transferred in favour of other persons, even the nature of the land had been changed and buildings have come and therefore, these factors came to the knowledge of the plaintiffs on the commissioner's submitting his report and therefore prays for amendment of the plaint in tune with the commissioner's report. In a suit for declaration of title and

consequential relief the burden is squarely on the plaintiffs to establish the title over the property and here is a case where even going by the contention of the defendant it is seen that a document had been executed in favour of the plaintiffs in the year 1969 but it has not been acted upon and there had been a transfer in the year 1980 in the name of the defendant. So, virtually, there cannot be any serious dispute with respect to the identification of the suit property. The larger question that revolves for consideration is regarding the question whether title had been passed on to the plaintiffs and whether the right of the plaintiffs, if any, is lost by adverse possession. The reasons given by the plaintiffs for the amendment of the plaint are clear and cogent and the lower court has taken note of those materials for allowing the amendment. By amending the plaint the cause of action had not changed and the plaintiffs still relies upon the fact that they are claiming title to the property which is given to them in the year 1969. So, until and unless they are able to establish that the plaint schedule property which they claim as per amendment also is obtained under the 1969 document, the plaintiffs will be out of court. So, there is no change of character of the suit and this amendment is really necessary for resolving the

controversy between the parties. Therefore, I find that the order passed by the learned Munsiff does not suffer from any illegality or infirmity and therefore the writ petition is devoid of merits and is dismissed. But it is made clear that the defendant be permitted to file additional written statement raising all the contentions which he wants to raise regarding the identity of the property at that stage.

M.N.KRISHNAN
Judge

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